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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

September 2, 2005

The Honorable Tom Perez
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear ^{Tom}President Perez:

As you and your colleagues return to your offices from the summer break and resume your legislative work, I wanted to provide you with a brief chronology and a detailed action plan outlining the steps the Planning Board and staff have taken to date regarding the issues surrounding Clarksburg Town Center.

While there is much more work to be done, the Planning Board – and our staff – have been working to address gaps that continue to be uncovered in our county's development review process.

CHRONOLOGY OF EVENTS

In 1994, the County Council approved a new kind of master plan for Clarksburg – essentially, the town was the last large-scale open area that could be newly developed in the county.

The Clarksburg master plan was new and innovative because of the changing nature of zoning. Prior to the 1990s, the vast majority of development planning utilized Euclidian zones that required housing, office units, commercial development and industrial uses to be in distinctly separate portions of any given development. As you may know, the vast majority of Montgomery County has been planned using these more restrictive Euclidian zones.

With the adoption of the Clarksburg master plan, the Planning Board intended to resist suburban sprawl and create a thriving mixed-use, pedestrian friendly community with housing units, commercial developments and transit options within close proximity. The master plan took great care in ensuring that historic Clarksburg would be appropriately connected to the newly 'neo-traditional' planned development.

ON-THE-GROUND CONSTRUCTION BEGINS IN CLARKSBURG

Developers got to work on project plans, the preliminary plans and then site plans. After the Planning Board approved the site plan for Clarksburg Town Center, the original developers sold their rights to another developer, who in turn, did the same thing. The developers and builders currently responsible for the issues in Clarksburg include: Newland Communities; NV Homes; Craftstar; Bozzuto; and Miller and Smith.

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CITIZENS CONTACT THE PLANNING BOARD

In August of 2004, a group of Clarksburg citizens who had purchased homes in the newly built Clarksburg Town Center established an informal community group called the Clarksburg Town Center Advisory Committee (CTCAC).

The group contacted MNCPPC staff and raised a number of concerns in their initial correspondence. They believed the actual buildings constructed did not conform to site plans approved by the Planning Board. They asserted that two multifamily condominium units in Clarksburg Town Center were built too tall and did not fit in with the rest of their community.

After thoroughly researching the issue and relying on the staff member who was primarily responsible for overseeing the Clarksburg development, Rose Krasnow, the new chief of our development review division, responded in writing to the complaint and told the group that she did not believe the developers were violating approved plans.

Unhappy with the response, CTCAC contacted me and I indicated that they could file a formal complaint with the Planning Board, who would then hear the allegations and issue a ruling on the merits of their complaint.

Because of their deep commitment to their new community and their growing interest in local land use issues, members of CTCAC later hired their own independent legal counsel and sent a formal complaint to the Planning Board.

PLANNING BOARD HOLDS PUBLIC HEARINGS

The Planning Board responded and held a public hearing on April 14, 2005. The community group presented their allegations; the developers defended their actions, and the Planning Board – relying in large part on the same staff member who was in charge of overseeing the Clarksburg development -- found no violations.

At the time of this hearing, no one had any reason to believe that the staff member was providing inaccurate information or had altered any legally binding documents. And so, based on the evidence presented to us, the Planning Board ruled 4-1 that the complainants did not meet their burden of proof to establish that violations had occurred.

It was not until after that hearing that the staffer disclosed she had changed MNCPPC's copy of the site plan. The staffer acknowledged that she had altered the document by crossing out the explicit height limit listed (45 feet) and replacing it with the term 'four stories.' However, she said she made the alteration more than one year prior to the hearing.

Through their extensive research, CTCAC found an unaltered copy of the approved site plan. Faced with the additional documentation, the staff member finally acknowledged that she altered the document much later than had previously been thought. As it turned out, she had altered the document sometime after the CTCAC pressed the building height issue.

The Planning Board took immediate action. The staff member in question was placed on administrative leave and later resigned from MNCPPC. We also immediately granted a reconsideration hearing and vacated our finding of no violations.

PLANNING BOARD RECONSIDERS ITS DECISION

On July 7, 2005, following a 10-hour hearing at which both the community and the developers presented their respective cases, the Planning Board unanimously found the developers had violated the site plans (that they had drafted and submitted to MNCPPC) by constructing numerous townhouses too tall and too close to the streets.

Between the April and July hearings, senior MNCPPC staff worked diligently with the CTCAC, hosted numerous meetings and attempted to negotiate an agreement between the community and the developers to address the community's growing concerns. While I believe our staff has been very responsive to the concerns raised by CTCAC, they were unable to reach a consensus on a course of action.

Meanwhile, community members began to allege that the developers were violating other requirements in the Planning Board-approved site plan. Before levying any sanctions against the developers or determining any plans of compliance, we wanted to (and were strongly encouraged by the citizens) to learn the full scope of all potential violations.

Shortly after the July 7th hearing, the Planning Board postponed a previously scheduled hearing on sanctions and plan of compliance to give our staff time to research what had gone wrong and determine the scope of the problems associated with implementing the very well thought out original master plan vision for Clarksburg Town Center.

ACTION PLAN TO IMPROVE REGULATORY PROCESS

Immediately after the July 7th hearing, senior staff began meeting on a daily basis to review the problems associated with Clarksburg; determine why building permits were issued when various plans did not conform; and institute a much more rigorous system of checks and balances for the development review process.

Because the Department of Permitting Services (DPS) also plays an integral role in the development review process, we immediately increased communication with key staff and collaborated to address gaps in both the development enforcement and regulatory roles both agencies play in the process. Undoubtedly, we should have been working much more closely all along.

1. BUILDING PERMIT FREEZE IN SITE PLAN ZONES

To help ensure that no other building permits were issued for site plans that did not conform with approvals from the Planning Board, County Executive Doug Duncan and I issued a temporary building permit freeze for site plan zones.

We decided that the 199 pending building permit applications in site plan zones should be verified for compliance by a Maryland certified/licensed engineer. We revised the entire building permit application to require developers to clearly disclose (in feet, not stories) the height and setbacks of

their proposed buildings. As soon as we received the newly required information, we began issuing building permits – as long as the accuracy of all data was verified. There is no longer a freeze on issuing building permits.

2. REVIEWING SITE PLANS

We have also embarked upon a thorough review of the 118 site plans approved since 2003. MNCPPC has completed reviews of all of the non-height and non-setback requirements on approximately 50 percent of the plans. DPS is conducting on-site height and setback reviews.

As you know, we submitted to the Council our preliminary findings in our bi-weekly reports. Those preliminary findings suggest potential violations at the Goodwill development in Bethesda; and at the Ciderbarrel Project in Germantown.

We have also found four correctable violations in other developments. These violations include incorrect tree plantings; a missing bench and an air-conditioning unit in the wrong place. We will issue warnings to those developers giving them 30 days to comply with site plans or face sanctions. More details will be provided in our next bi-weekly report.

3. STRENGTHENING OVERSIGHT ON SITE PLAN AMENDMENTS

During our internal research, it also came to light that our staff members have broadly applied the minor site plan amendment process to Planning Board-approved site plans. Individual planners no longer have unilateral authorization to approve amendments to site plans. Only the director of the agency is now authorized to do so. This is an essential shift in authority. The Planning Board will vote on all major amendments to plans.

The County Council, developers and citizens should clearly understand that this decision – in and of itself – will somewhat slow down the development review process. I wholeheartedly believe it is a necessary step to ensure that every single developer explicitly follows approved plans.

4. RESTRICTING LAST-MINUTE CHANGES TO SITE PLAN PROPOSALS

In addition, developers will no longer be permitted to make last-minute changes to development applications. Effective immediately, all documents and plans that come before the Planning Board for consideration will be locked 14 days prior to the scheduled hearing on the issue. Staff reports will also be available on our website 11 days before public hearings. This will also help ensure that involved community members are not caught off guard by last-minute changes routinely requested by developers.

5. REALLOCATING STAFF RESOURCES

To conduct the review of past site plans and ensure the highest level of accuracy in the development review division, we have reallocated staff resources and have taken an 'all hands on deck' approach to addressing the problems and finding solutions. We have appointed a new acting deputy director of MNCPPC – Bill Mooney -- whose primary responsibility it is to lead the effort in reforming our development review division and to coordinate Clarksburg issues and devise the strategy for moving forward.

I have appointed a team of senior-level employees to work under Mr. Mooney's and Ms. Krasnow's direction to review the Clarksburg Town Center and propose changes to infrastructure and amenities. They will review – and if necessary – redesign residential and commercial structures in a way that maximizes the original vision of the master plan. They will work closely with the community and the developer to reach consensus any proposed changes to the plan.

Within the development review division, staff is developing comprehensive checklists for processing all actions; instituting a peer review system that provides much needed checks and balances as well as ensuring the integrity of data presented to the Planning Board for consideration. Effective immediately, our staff will provide a single data table file for each project to ensure consistency.

Two planning staff and three inspectors from our countywide planning division began reporting to the development review division. In addition, leaders of the Prince George's Planning Board have allocated a planning staff member to our development review division.

We have required the developer of Clarksburg to pay for an on-site Clarksburg inspector (hired by MNCPPC) to ensure compliance with the site plan.

Our community-based planning staff will continue to participate as key members of the Clarksburg Working Group – a team of county employees from various agencies working to ensure proper staging of public facilities in Clarksburg; coordination of transportation projects; and establish a centralized communication mechanism. This group is preparing a report of their findings for the community that will be presented to them at the end of September.

6. ENHANCING RECORD-KEEPING

Our research and technology division is busy working to get all development-related documents on our website. I believe this action will ensure a streamlined and consistent record-keeping system on our part while also allowing the community greater access to review proposed plans from any computer connected to the Internet.

7. VOLUNTARILY COMPLYING WITH OUTSIDE INVESTIGATIONS

You may also know that we continue to fully and voluntarily cooperate with three investigations by outside agencies. The Office of Legislative Oversight is investigating what happened in Clarksburg Town Center; the state prosecutor is determining if any criminal wrongdoing occurred and the Montgomery County inspector general is looking at other aspects of MNCPPC. To date, we have voluntarily provided thousands of pages of documentation to these agencies.

We look forward to the advice and evaluation provided by the Office of Legislative Oversight. We understand that their report is now scheduled for release in early November. We plan to use that report to engage an outside, independent consultant to help us improve our systems and provide a comprehensive review of development review systems our county. We have issued a request for proposals today.

DATES OF FUTURE PUBLIC HEARINGS

As soon as the agency has thoroughly researched all alleged violations, the Planning Board will schedule another public hearing and issue rulings on the allegations. The Planning Board will schedule a second public hearing to decide on a plan of compliance -- which may include significant financial sanctions against the builders and developer.

CONCLUSION

The Planning Board and the staff take these issues very seriously. We have taken numerous important steps to institute needed reforms in our development review process. Certainly, there is more work to be done. I am committed to reforming the development review process to ensure it is effective, transparent and consistent.

This agency has provided excellent stewardship of our parks, safeguarded the agricultural reserve and impressed upon our residents the importance of smart growth and transit-oriented development. We will recoup the confidence of the public and the County Council.

As more than 16 people move to our county everyday over the next 25 years, it will be up to the Maryland-National Capital Park and Planning Commission -- and you -- to plan adequately for the county's future. I look forward to working with you on restoring the agency's solid reputation of the past and bringing our systems into the 21st century.

Thank you for supporting our initial reforms. I'd be delighted to answer any questions you may have. Please call me at 301/495-4605.

Sincerely,



Derick P. Berlage
Chairman